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Attorneys for Defendants

STATE OF HAWAI‘I; DEPARTMENT OF

TRANSPORTATION, STATE OF

HAWAI‘I; and EDWIN SNIFFEN, in his official

capacity as Director of the Department of

Transportation

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI‘I

HELICOPTER ASSOCIATION
INTERNATIONAL, SAFARI
AVIATION, INC. d/b/a SAFARI
HELICOPTERS HAWAI‘I,

Plaintiff,

v.

STATE OF HAWAI‘I;
DEPARTMENT OF
TRANSPORTATION, STATE OF
HAWAI‘I; EDWIN SNIFFEN, in his
official capacity as Director of

CIVIL NO. 1:23-CV-00083-LEK-WRP

DEFENDANT EDWIN SNIFFEN’S
SCHEDULING CONFERENCE
STATEMENT; CERTIFICATE OF
SERVICE

Scheduling Conference:

Date: November 13, 2023

Time: 9:30 a.m.

Magistrate Judge: Hon. Wes Reber Porter

Telephone conference

Hawai‘i Department of
Transportation,

Defendants.

**DEFENDANT EDWIN SNIFFEN’S SCHEDULING CONFERENCE
STATEMENT**

Defendant EDWIN SNIFFEN, in his official capacity as Director of Hawai‘i Department of Transportation (Defendant), by and through his attorneys, Patrick K. Kelly and Stuart N. Fujioka, Deputy Attorneys General, hereby submits this Scheduling Conference Statement pursuant to Rule 16.2(b), Local Rules of Practice for the United States District Court for the District of Hawai‘i. As explained below, there are no remaining claims against the other Defendants in this matter.

I. NATURE OF THE CASE

Plaintiffs are an organization of helicopter operators and a local air tour business who claim that they will be harmed by recent State legislation. Act 311, enacted last year by the Hawai‘i Legislature, revises Hawaii Revised Statutes (HRS) §261-12(b) to require that the Director of the Hawai‘i Department of Transportation adopt rules regarding the submission of monthly reports containing certain basic information about tour aircraft operators. This lawsuit challenges Act

311—as well as possible rules that HDOT might, at some point in the future, adopt, on various theories related to federal preemption.

The First Amended Complaint (FAC) filed on May 8, 2023 alleged five counts. Counts I-IV sought a Declaratory Judgment against the State of Hawaii (SOH) and Defendant that Act 311 is barred by Federal Preemption. Count V sought a declaration against the SOH, Department of Transportation (HDOT) and Defendant (all Defendants) that Act 311 is in violation of a prior settlement reached in USDC Hawaii Civ. No. 90-00369.

On May 12, 2023, all Defendants filed a Motion to Dismiss the FAC in its entirety. The matter was heard before the Hon. Leslie E. Kobayashi on September 29, 2023. On October 17, 20223, the Court filed its Order granting the motion in part and denying it in part. As the result of the Court’s ruling, only Counts I-IV remain pending against the Defendant who, as the Director of the Department of Transportation, is responsible for adopting the rules called for in Act 311.

Defendant will continue to assert defenses including the failure to state a claim, sovereign immunity lack of ripeness, and failure to exhaust administrative remedies. Administrative rules responsive to Act 311 have not yet been promulgated, and whether they are preempted by Federal Law remains a matter of

speculation. Furthermore, the Defendant's powers and obligations of enforcement remain so undefined as to preclude any declaratory ruling against him.

II. JURISDICTION AND VENUE

Defendant reserves the right to challenge subject matter jurisdiction on grounds including but not limited to: sovereign immunity; lack of ripeness; and failure to exhaust administrative remedies. Notwithstanding those jurisdictional challenges, venue appears proper.

III. DEMAND FOR JURY TRIAL

Plaintiffs have filed a demand for jury trial.

IV. INITIAL DISCLOSURES

Disclosures should be made in accordance with the Court's standard practice and the Rules of Civil Procedure.

V. DISCOVERY/MOTIONS

Formal discovery requests have not yet been exchanged. Defendant anticipates filing a motion for Dismissal and/or Summary Judgment upon completion of discovery.

VI. SPECIAL PROCEDURES OR OTHER MATTERS

Special Procedures do not appear necessary.

VII. RELATED CASES

Defendants are not aware of any related cases in this Court or state court.

VIII. ADDITIONAL MATTERS

None.

IX. SETTLEMENT

Defendants' and Plaintiffs' counsel have met and conferred by telephone.

However, no settlement offers were exchanged.

DATED: Honolulu, Hawai'i, November 6, 2023.

/s/ Stuart N. Fujioka

PATRICK K. KELLY

STUART N. FUJIOKA

Deputy Attorneys General

Attorneys for Defendant

EDWIN SNIFFEN, in his official capacity
as Director of Hawai'i Department of
Transportation

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FOR THE DISTRICT OF HAWAI'I

HELICOPTER ASSOCIATION
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HELICOPTERS HAWAI'I,

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STATE OF HAWAI'I;
DEPARTMENT OF
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Defendants.

CIVIL NO. 1:23-CV-00083-LEK-WRP

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the date and by the methods of service noted below, a true and correct copy of the foregoing document was served on the following at their last known address:

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Served electronically through CM/ECF:

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Attorneys for Plaintiffs HELICOPTER ASSOCIATION
INTERNATIONAL and SAFARI AVIATION, INC. d/b/a
SAFARI HELICOPTERS HAWAI‘I

DATED: Honolulu, Hawai‘i, November 6, 2023.

/s/ Stuart N. Fujioka
PATRICK K. KELLY
STUART N. FUJIOKA
Attorneys for STATE OF HAWAI‘I;
DEPARTMENT OF TRANSPORTATION,
STATE OF HAWAI‘I and EDWIN
SNIFFEN, in his official capacity as
Director of the Hawai‘i Department of
Transportation